IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 32264 of 2006(N)

PETITIONER:

E.V.GOVIND,
HOUSE NO.1/1390, OPPOSITE MOSQUE, PATTALAM,
FORT KOCHI.

BY ADV. SRI.V.PREMCHAND

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
ERNAKULAM.

2. THE TAHSILDAR (RR),
FORT KOCHI.

3. THE VILLAGE OFFICER,
FORT KOCHI.

BY GOVT.PLEADER SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2006,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.32264 OF 2006-N

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Dated this the 5th day of December, 2006.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader.

2. The petitioner is the son of an assessee against whom there are assessment orders under the Kerala General Sales Tax Act. According to him, he and his paternal grandfather reside together and some of the movables in the building belongs to the grandfather, who has executed a Will in favour of the petitioner. However, the grandfather is alive. Accordingly, it is contended that the movables may not be proceeded against for the dues of petitioner's father. The learned counsel points out that though the Officers of the Revenue Department are quite often reaching the residential premises of the petitioner, no statutory notices have been issued under the relevant laws for recovery by distress.

3. In the aforesaid circumstances, if the petitioner or his grandfather has any claim on any movable or immovable property, that has to be pursued before the

competent authority under the Revenue Recovery Act in the form of a claim, if at all there is any attachment and distress. But distress action cannot follow unless statutory notices are issued.

4. Hence, this writ petition is disposed of directing that there shall be no distress action against any property belonging to the petitioner except in accordance with the provisions of the Revenue Recovery Act and without issuing any due notice as provided by the said statute and Rules framed thereunder. It is further directed that if any movables are attached, the petitioner will be given an opportunity to take the same in third party custody on such terms as the Revenue Recovery officials may deem fit and that any claim petition filed by the petitioner or his grandfather will be adjudicated by the competent authority.

This judgment does not touch on the right of the assessee to take appropriate action against any assessment orders against him and also seek appropriate interlocutory orders from the superior authorities in the hierarchy as provided by the sales tax laws.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.